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No. 01-1578

Supreme Court, U.S.
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In The
Supreme Court of the United States

MEDICAL ASSURANCE OF WEST VIRGINIA, INC.,
Petitioner,

v.

EVANGELINE C. PIZARRO, M.D.; COLUMBO AND STUHR, P.L.L.C.,
Respondents,

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS FOR WEST VIRGINIA

REPLY TO BRIEF IN OPPOSITION

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60pg

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

REPLY TO BRIEF IN OPPOSITION 1

I. A Justiciable Controversy Remains Notwithstanding Medical Assurance of West Virginia, Inc.'s Agreement to Indemnify Evangeline C. Pizarro Any Excess Verdict in the Ohio Action 1

CONCLUSION 2

TABLE OF AUTHORITIES

Page

Case:

Shamblin v. Nationwide Mut. Ins. Co.,
153 W.Va. 585, 396 S.E.2d 766 (1990) 1

Statutes:

9 U.S.C. § 1, et. seq 2

W.Va. Code § 33-11-1 et. seq 2

REPLY TO BRIEF IN OPPOSITION

I. A Justiciable Controversy Remains Notwithstanding Medical Assurance of West Virginia, Inc.'s Agreement to Indemnify Evangeline C. Pizarro Any Excess Verdict in the Ohio Action.

Medical Assurance of West Virginia, Inc. ["Medical Assurance's"] acknowledges that it has agreed to indemnify Evangeline C. Pizarro, M.D. ["Dr. Pizarro"] for all damages or other relief awarded against her with respect to the August 25, 2000 jury verdict rendered in the Court of Common Pleas of Belmont County, Ohio, including any amounts in excess of her policy limits. *See*, Respondent's Brief, p. 6. This agreement does not, however, negate the existence of a justiciable controversy between the parties, which must be submitted to arbitration pursuant to the parties' insurance contract.

Following Medical Assurance's agreement to indemnify Dr. Pizarro for excess damages, Dr. Pizarro filed a Motion for Partial Summary Judgment in the Circuit Court of Ohio County. By Order dated May 13, 2002, the Circuit Court of Ohio County granted Dr. Pizarro's Motion for Partial Summary Judgment, finding that Medical Assurance's agreement to indemnify Dr. Pizarro for excess damages resolved one portion of her *Shamblin*[1] claim. App. 4, Respondent's Brief in Opposition. The Circuit Court specifically identified five (5) issues of disputed material facts that must be resolved with respect to Dr. Pizarro's remaining claims against Medical Assurance and retained jurisdiction over Medical Assurance for resolution of those

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[1] In West Virginia, common law bad faith claims are commonly referred to as *Shamblin* claims after the West Virginia Supreme Court of Appeals opinion in *Shamblin v. Nationwide Mut. Ins. Co.*, 153 W.Va. 585, 396 S.E.2d 766 (1990).

issues and claims. App. 4-5, Respondent's Brief in Opposition.

Medical Assurance's agreement to indemnify Dr. Pizarro resolves only one portion of her *Shamblin* claim. The issues of whether Dr. Pizarro may recover compensatory damages for her alleged aggravation, inconvenience and emotional distress, net economic loss, punitive damages, and attorney fees remain pending. Moreover, Medical Assurance's agreement to indemnify Dr. Pizarro for any excess verdict does not resolve her claims for alleged violation of the West Virginia Unfair Trade Practices Act, *W.Va. Code § 33-11-1 et. seq.*

The Circuit Court of Ohio County West Virginia exceeded it legitimate authority by retaining jurisdiction over Dr. Pizarro's claims, entertaining Dr. Pizarro's Motion for Partial Summary Judgment, entering an Order Granting Partial Summary Judgment in favor of Dr. Pizarro regarding the indemnification issue and continuing to exercise jurisdiction over Dr. Pizarro's remaining claims despite the valid arbitration agreement contained within a contract of insurance between the parties. The circuit court further erred by invoking a previously unarticulated state public policy against arbitration provisions in insurance contracts to invalidate the arbitration agreement and refusing to enforce the arbitration agreement as required under the Federal Arbitration Act, *9 U.S.C. § 1, et. seq.*

CONCLUSION

WHEREFORE, Medical Assurance of West Virginia, Inc. respectfully requests that a Writ of Certiorari be issued and this Court accept review of this matter.

Respectfully submitted,
By Counsel

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